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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,240	02/14/2006	Naomi Nishikata	VPM-00101	9555
26339 7590 12/10/2008 MUIRHEAD AND SATURNELLI, LLC 200 FRIBERG PARKWAY, SUITE 1001 WESTBOROUGH, MA 01581				
EXAMINER				
HUYNH, NAM TRUNG				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/568,240

**Applicant(s)**

NISHIKATA ET AL.

**Examiner**

NAM HUYNH

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

This office action is in response to amendment filed on 8/25/08. Of the previously presented claims 1-10; claims 1 and 4-10 have been amended and claims 11-18 have been added.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-7 and 9-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Masuyama et al. (US 2004/0029640) (hereinafter Masuyama).

Regarding claim 1, Masuyama teaches a mobile communication terminal (portable game apparatus) comprising (paragraph 98):

first memory means (latches) and second memory means (work RAM) for storing data (paragraphs 100, 102, 104; latches hold respective values of an X and Y counter);

application program execution means for executing an application program (CPU of portable game apparatus) using data memorized stored in said second memory

means (paragraph 100, 117 ; the CPU utilizes the data stored on the work RAM to execute a game program);

detection means for detecting at least one of position, direction, attitude and movement of the mobile communication terminal along at least one axis of a coordinate system (paragraph 99);

memory process means for performing a memory process to memorize store detection result data acquired based on detection results by said detection means in said first memory means, wherein the detection result data includes information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal along the at least one axis (paragraphs 102, 104; the latches store values from the xy-axis acceleration sensor and the z-axis contact switch); and

data transfer means for transferring the detection result data memorized stored in said first memory means to said second memory means, according to a data transfer instruction from said application program execution means (paragraphs 117, 119; the values held in the latches are transferred to the work RAM);

wherein said application program execution means executes said application program using the detection result data memorized stored in said second memory means (paragraph 100, 117; work RAM is used to execute the game program).

Regarding claim 2, Masuyama teaches said application program execution means has an instruction set for generating said data transfer instruction according to description in said application program (paragraph 100).

Regarding claim 3, Masuyama teaches an application program (game program), characterized in that a computer in said mobile communication terminal according to claim 2 works so that the application program execution means generates said data transfer instruction using said instruction set, by being executed by said application program execution means (paragraphs 99, 100).

Regarding claim 4, Masuyuma teaches a mobile communication terminal (portable game apparatus), comprising:

memory means for storing data (paragraphs 98, 102);

application program execution means (CPU) for executing an application program (game program) using data memorized stored in said memory means (paragraph 98);

a 3-axis magnetic sensor and a 2-axis acceleration sensor used as detection means for detecting at least one of position, direction, attitude and movement of the mobile communication terminal in connection with at least one axis of a coordinate system in accordance with a detection instruction generated by said application program execution means according to a description of said application program (game program) (paragraphs 99, 108, the detecting means and acceleration sensor are used for instructions to play a game); and

memory process means for storing detection result data acquired based on detection results by said detection means in said memory means, wherein the detection results include information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in connection with the at

least one axis (paragraphs 102, 104; the latches store values from the xy-axis acceleration sensor and the z-axis contact switch); and

wherein said application program execution means executes said application program using the detection result data stored in said memory means (paragraphs 100, 117; work RAM is used to execute the game program).

Regarding claim 5, Masuyuma teaches a mobile communication terminal (portable game apparatus) comprising:

application program execution means (CPU) for executing an application program (game program) using data stored in memory means (paragraph 98);

detection means for detecting at least one of position, direction, attitude and movement of said mobile communication terminal in connection with at least one axis of a coordinate system (paragraph 99); and

data process means for performing data process of assigning the detection data of said detection means to predetermined arithmetic expression (count value) for calculation and storing the calculation result data in said memory means, wherein the detection data includes information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in connection with the at least one axis (paragraphs 103, 104); and

wherein said application program execution means executes the application program using the calculation result data memorized stored in said memory means (paragraphs 100, 117; work RAM is used to execute the game program).

Regarding claim 6, Masuyuma teaches a mobile communication terminal (portable game apparatus) comprising:

application program execution means (CPU) for executing an application program (game program) using data stored in memory means (paragraph 98);

detection means for detecting at least one of position, direction, attitude and movement of said mobile communication terminal in connection with at least one axis of a coordinate system (paragraph 99); and

data process means (CPU) for performing data processes of linking mutually between detection data of said detection means or data calculated from this detection data (data stored in the latch) and other data acquired by means other than said detection means (program ROM), and storing the linked data in said memory means, wherein the detection data includes information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in connection with the at least one axis (paragraphs 100, 102; the CPU uses data stored in the latch to and links it to instructions to operate the game program stored in the program ROM); and

wherein said application program execution means executes the application program using said linked data memorized stored in said memory means (paragraphs 100, 117; the CPU executes the game program in accordance to all received data).

Regarding claim 7, Masuyuma teaches Masuyuma teaches a mobile communication terminal (portable game apparatus) comprising:

application program execution means (CPU) for executing an application program (game program) using data stored in memory means (paragraph 98);

detection means for detecting at least one of position, direction, attitude and movement of said mobile communication terminal in connection with at least one axis of a coordinate system (paragraph 99); and

data process means for performing a data process of specifying at least two of detection data of said detection means or data calculated from the detection data (X or Y axis outputs), which meet predetermined conditions (during a period), and storing the specified data in said memory means, wherein the detection data includes information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in connection with the at least one axis (paragraphs 99, 104); and

wherein said application program execution means executes an application program using said specified data memorized stored in said memory means (paragraphs 100, 117; work RAM is used to execute the game program).

Regarding claim 9, Masuyama teaches said detection means includes angle detection means for detecting an angle against the standard angle around a virtual axis leading to a specified direction (paragraph 99, 113).

Regarding claim 10, Masuyama teaches said detection means includes acceleration detection means for detecting acceleration toward a specified direction working on said mobile communication terminal (paragraph 99).

Regarding claim 11, the limitations are rejected as applied to claim 1.



Regarding claim 12, Masayuma teaches the application execution processor and the memory processor are the same processor (paragraph 98, the CPU executes the game program and controls operation of the memory).

Regarding claim 13, Masayuma teaches the first memory and the second memory are different memory locations on a memory device (figure 3; the latches are part of the cartridge and the work RAM is part of the memory on the portable game apparatus).

Regarding claim 14, Masayuma teaches the at least one sensor includes at least one of: a magnetic sensor and an acceleration sensor (paragraph 99).

Regarding claim 15, Masayuma teaches the at least one sensor includes a geomagnetic sensor (paragraph 99).

Regarding claim 16, Masayuma teaches the coordinate system includes a spatial three-axis coordinate system (paragraph 99).

Regarding claim 17, Masayuma teaches execution of the application program using the detection result data includes displaying an action on a display of the mobile communication terminal that corresponds to a change in the at least one of position, direction, attitude and movement of the mobile communication terminal (paragraph 100).

Regarding claim 18, Masayuma teaches execution of the application program using the detection result data includes causing at least a portion of the application program to stop executing in response to a change in the at least one of position,

Art Unit: 2617

direction, attitude and movement of the mobile communication terminal (paragraphs 100, 117).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masuyama et al. (US 2004/0029640) (hereinafter Masuyama) in view of Hartman et al. (US 7,175,529) (hereinafter Hartman).

Masuyama teaches the limitations set forth in claims 5, 6, or 7, and that the mobile communication terminal further comprises radio communication means for communicating outside by wireless communication utilizing radio waves (paragraph 98), but does not explicitly teach radio wave strength confirmation means for confirming strength of the radio waves utilized by said radio communication means at specified

time intervals; wherein said data process means is used as at least one part of said radio wave strength confirmation means and performs said data process when confirming radio wave strength. Hartman teaches a RF receiver module for receiving game signals that comprises a receive signal strength indicator (RSSI) level detector module for detecting signals from a game controller that transmits at different time intervals. If the RSSI level is of sufficient strength the detector module sends a data enable signal (confirmation of signal strength at specified time intervals). When the signal is considered valid, the saved game data (perform data process) is passed (column 5, lines 52-67, column 6, lines 26-45). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Masuyama, to include a RSSI level indicator, as taught by Hartman, in order to inform a user of the invention of the signal strength for playing a game using the modem. This modification enhances the flexibility of the invention by allowing a user to take action in response to signal strength (i.e. a user may move to a location with stronger signal strength while participating in a game).

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAM HUYNH whose telephone number is (571)272-5970. The examiner can normally be reached on 8 a.m.-5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Eng/  
Supervisory Patent Examiner, Art Unit 2617

NTH  
12/2/08